PENDAKWA RAYA

v.

ZAINAL ABIDIN BIN MOHD. ZAID

MAHKAMAH TINGGI, SHAH ALAM
DATO' MAHADEV SHANKAR J.
[SELANGOR CRIMINAL REVISION BOL: 43-9-91]
17 MARCH 1992

CRIMINAL LAW: Accused charged under Firearms Act 1960 - Suspected of being of unsound mind and incapable of making defence at trial - Detained for observation - At subsequent trial Accused pleaded guilty - Defence submitted, and Prosecution did not oppose submission of, medical report as evidence that Accused found to have been of unsound mind at time of commission of offence but later fit to plead at trial - Whether plea of guilt can be accepted from person of unsound mind - Requirements of s. 343 certificate - Procedure to be followed in future case.

The Accused was charged under s. 39 of the Firearms Act 1960. On being produced in Court, the Accused was suspected of being of unsound mind and incapable of making his defence, as a result of which, he was ordered under s. 342 of the Criminal Procedure Code to be detained by the Medical Superintendent of Hospital Bahagia for observation and report. The medical report issued subsequently stated that at the time of commission of the alleged offence, the Accused was of unsound mind but that he is presently fit to plead in Court. At the hearing, the Accused pleaded guilty to the charge and admitted to the facts alleged against him. The learned Magistrate made a specific finding under s. 347 of the Code that the Accused had committed the act specified in the charge. Defence Counsel then submitted the medical report which was received in evidence and not opposed to by the Prosecution. An application was made for the Accused to be committed to the care of his bailor brother as provided by s. 348 and 351 of the Code. The DPP applied for a revision on the grounds that (i) a plea of guilt cannot be accepted from a person of unsound mind (ii) the medical certificate did not comply with the requirements of s. 343 of the Code and (iii) it was wrong to commit the Accused to the care of his brother.

Held:

[1] There is a distinction between unsoundness of the mind at the time of the offence and at the time of the trial. In the present case, the Accused was certified to be of unsound mind at the time of commission of the offence but was fit to plead in a court of law. By s. 343(3) of the Code the certificate was receivable in evidence. The Prosecution did not challenge the Accused's fitness to plead. As such, the Magistrate was entitled to accept the Accused's admission of the facts stated in the charge.

[2] The Magistrate's acceptance of the plea of guilt could be criticized to the extent that if insanity had been established, then the judgment would have had to be a special verdict "of acquittal on the ground of mental disorder".

[3] In this case the Magistrate, being the sole fact-finder and in the absence of the any contest from the Prosecution, was entitled to proceed as he did. The Accused being of sufficiently sound mind to claim trial, he should be able to admit the facts alleged against him. It was then open for the defence to raise the defence of insanity and rely upon the medical testimony before the Court.

[4] Consequently, the recording of the plea of guilt should be treated as a mere irregularity which did not occassion any failure of justice.

Obiter:

In future cases which are simple and straightforward non-jury trials defence Counsel should raise the defence of insanity immediately after the charge is read. If the facts are then admitted the Court can proceed to determine if (i) those facts will support a finding that the act alleged was committed and (ii) then consider the material in support of the insanity defence. If there is any doubt on either issue, the Court can and must insist in formal evidence being led.

[Application for revision dismissed].

Cases referred to:

PP v. Alang Mat Nasir [1938] MLJ 153 ***(refd)***
Mohamed Isa v. PP [1939] MLJ 160 ***(refd)***
Aladin v. PP [1964] MLJ 345 ***(refd)***
Chia Chan Bak v. The King [1938] MLJ 147 ***(refd)***
Baharom v. PP [1960] MLJ 249 ***(refd)***
Jusoh v. PP [1956] MLJ 84 ***(refd)***
Lee Ah Chye v. PP [1963] MLJ 347 ***(refd)***
Yeoh Ah Seng v. PP [1967] 1 MLJ 231 ***(refd)***
Goh Yoke v. PP [1970] 1 MLJ 63 ***(refd)***

Legislation referred to:

Criminal Procedure Code, ss. 173(b), 342, 342(4), 343(3), 343(4), 344, 347, 348, 351, 422
Evidence Act 1950, s. 114(d)
Firearms Act 1960 (revised Act No. 206) ss. 39, 43
Penal Code, s. 84

Other source referred to:
"The Defence of Insanity and Intoxication in Malaysian Criminal Law" by W.E.D. Davies [1958] MLJ xxxi

For the respondent - Satvinder Singh Tugal; Mohamad Ibrahim & Co.
For the public prosecutor - Rosli Zain; DPP

JUDGMENT

Mahadev Shankar J:
This is an application for revision of an order of the Magistrate's Court Rawang whereby the Court accepted a plea of guilt of the Accused on a charge under s. 39 of the Firearms Act 1960 (Revised Act No. 206). The offence is punishable under s. 43 of this Act with imprisonment up to one year and a fine not exceeding RM2,000 or both. Purporting to act under the provisions of Chapter XXXIII of the Criminal Procedure Code (the Code) the Magistrate committed the Accused to the care of his bailor for safe custody pending the decision of the Ruler of the State and further order.

The offence alleged was committed on the 12 August 1989. The Accused was put into the Psychiatric Ward in the General Hospital in K.L. after he was apprehended. Pursuant to a formal warrant of arrest issued on the 28 May 1990 the Accused was produced in Court on the 28 June 1990. On that day the court suspected the Accused to be of unsound mind and incapable of making his defence. So it made an order under s. 342 of the Code whereby the Medical Superintendent of Hospital Bahagia was required to detain the Accused for observation and make a report. The statutory period of one month's initial detention was extended in accordance with s. 342(4) of the Code.

On 21 August 1990 the Hospital issued its report. After describing the nature of the Accused's mental disorder (Paranoid Schizophrenia) both Doctors in charge stated:

> It is our opinion that at the time of the alleged offence he was of unsound mind. He knew the nature and quality of the act but did not know that it was wrong and contrary to law.
>
> He responded well to treatment and is presently fit to plead in the Court of Law.

After this report was received the case was mentioned on 22 September 1990. On that day the Accused was released on bail into the care of his brother pending trial. This was in accordance with s. 344 of the Code. The case was to be proceeded with on 22 September 1990.

After a number of postponements either because the prosecution or the defence was not ready the case eventually came up for disposal on 6 June 1992. The Accused was represented by his lawyer.

After the charge was read to the Accused he pleaded guilty. The prosecuting officer was an Inspector. He submitted a written statement of the facts of the case (Ex. P1). This document is a simple narration of the events constituting the offence (the Accused had fired a number of shots in the air with his shotgun), the circumstances of the initial arrest, and the disarming of the Accused.

After the Accused admitted the facts the learned Magistrate made a specific finding under s. 347 of the Code that the Accused had committed the act specified in the charge.

His lawyer then made a submission in the course of which he submitted the medical report of Hospital Bahagia dated 21 August 1990 referred to earlier, as part of the defence. It was received in evidence and marked Ex. D2. He then applied for the Accused to be commmitted to the care of his bailor brother as provided by s. 348 and 351 of the Code.

Apart from saying that the Accused had no previous convictions the prosecuting officer did not offer any resistance to the defence submission or the Medical Report. The Magistrate then proceeded to make the order aforesaid.

Before me the learned DPP attacked the orders made by the Magistrate on the following grounds:

(1) that a plea of guilt cannot be accepted from a person of unsound mind;
(2) that the medical certificate did not fully comply with the requirements of section 343 of the Code.
(3) that it was wrong of the Magistrate to commit the Accused to the care of his brother.

Since reserving judgment I have had the opportunity of considering some material which should be of interest to both the learned DPP and defence Counsel in this case. These are:

(1) The defence of Insanity and Intoxication in Malaysian Criminal Law by W.E.D. Davies [1958] MLJ xxxi.

(2) *PP v. Alang Mat Nasir* [1938] MLJ 153
(3) *Mohamed Isa v. PP* [1939] MLJ 160
(4) *Aladin v. PP* [1964] MLJ 345
(5) *Chia Chan Bak v. The King* [1938] MLJ 147
(6) *Baharom v. PP* [1960] MLJ 249
(7) *Jusoh v. PP* [1953] MLJ 84
(8) *Lee Ah Chye v. PP* [1963] MLJ 347
(9) *Yeoh Ah Seng v. PP* [1967] 1 MLJ 231
(10) *Goh Yoke v. PP* [1970] 1 MLJ 63

The following propositions emerge from a reading of the cases and the provisions of the Code.

There is a distinction between unsoundness of mind at the time of the offence and at the time of the trial. In the present case the medical superintendent had certified that the accused **was** of unsound mind at the time of the offence, but was fit to plead in a court of law on 21 August 1990. By s. 343(3) of the Code the certificate is receivable as evidence. There is a presumption of continuity under s. 114(d) of the Evidence Act 1950. The prosecution did not challenge the accused's fitness to plead on the day of the trial. I hold that the Magistrate was entitled to accept the accused's admission of the facts stated in the charge.

It is to be noted that by s. 343(4) of the Code, if the accused person is certified to be of unsound mind and incapable of making his defence, the trial cannot continue.

The Magistrate's acceptance of a plea of guilt can be criticised to the extent that if insanity is established then the judgment has to be a special verdict "of acquittal on ground of mental disorder." (See s. 347 of the Code and para 588 of Archbold 36th Edn.,) It is a contradiction in terms to say a person is guilty of an offence and then acquit. This may be the source of the learned DPP's dissatisfaction with the procedure adopted by the learned Magistrate.

The issue as to whether an accused person was insame in the sense required by s. 84 of the Penal Code is a matter for the court. Legal insanity is not for the medical witnesses to decide however eminent they may be. That onus is upon the defence and it is to satisfy the court on the balance of probabalities only. It can be discharged from evidence adduced from the prosecution or from defence witnesses. It is a lighter burden than that cast upon the prosecution who must prove the charge beyond reasonable doubt.

It will be recollected that s. 84 of the Penal Code says in so many words that "Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

One cannot plead guilty to the commission of an act which is not an offence in law. What the medical certificate means when it says that an accused person is fit to stand trial is that at that point in time he is of sufficiently sound mind to understand the nature and consequence of the proceedings against him.

Now insanity as a defence is a special issue which has to be determined by the court. If the defence intends to contest the sufficiency of the evidence to make out the commission of the offence alleged in the charge it can claim trial in the first instance and defer raising the defence of insanity until the prosecution has closed its case.

But where the defence does not challenge the facts alleged as constituting the offence and intends to set up the defence of insanity, defence Counsel should give formal notice thereof immediately after the charge is read.

The procedure in the lower courts is summary. It is to be noted that s. 173(b) of the Code says nothing about the facts of the case being read out after a plea of guilt has been voiced. This salutary practice is an invaluable aid to assist the court to ascertain that the accused understands the nature and consequences of his plea and intends to admit without qualification the offence alleged against him.

In my view if the accused is of sufficiently sound mind to claim trial, he should likewise be able to admit the facts alleged against him, by the prosecution. It is then open for the defence to raise the defence of insanity and rely upon the medical testimony before the court. The Magistrate in this case was the sole fact finder, and in the absence of any contest from the prosecution I think he was quite entitled to proceed as he did.

Consequently I would treat the recording of the plea of guilt as a mere irregularity which did not occasion any failure of justice. Section 422 of the Code covers the situation and no further remedial action is required. In future cases like

this which are simple and straightforward, defence Counsel should raise the defence immediately after the charge is read. If the facts are then admitted the court can proceed to determine if those facts will support a finding that the act alleged was committed and then consider the material in support of the insanity defence. Of course if there is any doubt on either issue, the court can and must insist on formal evidence being led.

What has been said here cannot apply to jury trails by reason of the very different provisions applicable thereto. Whether the acts alleged against the accused were committed and whether the accused was insane at the time are matters for the jury who must hear the evidence before they can decide these issues.

PULAU PINANG CLINIC SDN. BHD.

v.

SHUI KAT & CO. (PG) SDN. BHD. & ANOR.

HIGH COURT, PENANG
DATO' ABDUL HAMID B.
HJ. MOHAMED J.
[CIVIL SUIT NO. 23-1375-85]
12 AUGUST 1992

CONTRACT: Agreement for sale and purchase of land - Conditional agreement - Failure to satisfy condition - Whether agreement could be rescinded and deposit paid refunded - Collateral agreement for sale and purchase of shares - Whether the two agreements interdependant - Whether rescission of one agreement automatically led to termination of the other.

By an agreement dated 7 January 1985 (the land agreement), the defendant agreed to sell a piece of land to the plaintiff. The plaintiff paid a sum of RM705,672 by way of deposit upon execution of the agreement, and was to pay the balance of the purchase price within a specified period, provided all the conditions were complied with. The completion of the land agreement was subject to the condition that the land should be capable of development into a private hospital as as an extension of the Penang Medical Centre, the plaintiff to obtain the required approval of the Majlis Perbandaran Pulau Pinang (MPPP) within the stipulated period.

The plaintiff was unable to obtain the required approval of the MPPP. On 6 October 1985, they gave notice rescinding the agreement, and claiming the refund of the deposit. The defendants did not refund the deposit. The plaintiff therefore claimed for an order for rescission of the land agreement and refund of the deposit.

The defendants averred that the sale and purchase was upon the terms and conditions contained not only in the land agreement, but also in another agreement (the share agreement) of the same date, between the plaintiff and the second defendant, the managing director and major shareholder of the first defendant company. According to the share agreement, the plaintiff agreed to purchase the land from the defendants at the agreed price on the second defendant agreeing to purchase certain num-